

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF:
Vasquez Boulevard/Interstate 70 Site
Denver, CO

Joe E & Mary G. Aragon,

Respondents

ADMINISTRATIVE ORDER DIRECTING
COMPLIANCE WITH REQUEST FOR ACCESS

U.S. EPA Region 8
CERCLA Docket No. **CERCLA-08-2006-0008**

Proceeding Under Section 104(e) of the
Comprehensive Environmental Response,
Compensation, and Liability Act, as amended, 42
U.S.C. § 9604(e)

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I. JURISDICTION

1. This Administrative Order (“Order”) is issued to Joe E. And Mary G. Aragon (hereinafter, “Respondents”), pursuant to the authority vested in the President of the United States by Section 104(e)(5) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9604(e)(5), and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR § 300.400(d)(4). This authority was delegated to the Administrator of the United States Environmental Protection Agency (“EPA”) on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923, redelegated to the Regional Administrators of EPA on May 11, 1994, by EPA Delegation No. 14-6, and further delegated to Directors of the Legal Enforcement and Technical Enforcement Programs, Office of Enforcement, Compliance and Environmental Justice.

II. STATEMENT OF PURPOSE

2. This Order requires Respondents to grant EPA and its authorized representatives entry and access to the property described in Paragraph (4) below (“the Property”) located in Denver, Colorado for the purpose of determining the need for response and if necessary taking a response action at 3802 Humoldt Street within the Vasquez Boulevard/Interstate 70 Study Area (the “Site”). This Order further requires Respondents to refrain from interfering with access to the Property by EPA and its authorized representatives for the purposes set forth herein.

III. FINDINGS OF FACT

3. Respondents own property in Denver, Colorado within the Study Area designated for investigation at the Site. The City and County of Denver property records indicate that Respondents were the last known owners of said property. The City and County of Denver (the “City”) has tax certificate number P#02233-18-004-000 on this property. The City has not taken title to this property due to concerns about potential contamination from the Site. The property is intended for future residential use.

4. The property is a vacant lot towards the middle of the 3800 and 3900 blocks of Humboldt Street, in the City of Denver, Colorado. The property is commonly referred to as either 3802 Humboldt or 3930 Humboldt and is located within the Cole neighborhood.

5. The Site is listed on the CERCLA National Priorities List, 40 C.F.R. Part 300, App. B, pursuant to Section 105(a)(8)(B) of CERCLA, 42 U.S.C. § 9605(a)(8)(B).

6. EPA proposed the ASARCO Globe Site be included on the NPL in May 1993. The ASARCO Globe Site was used for the smelting and refining of metals and metal based chemicals. Residential soil samples collected as part of the Globe Site investigation revealed widespread lead and arsenic contamination in the area, beyond the scope of that Site investigation. The Colorado Department of Public Health and Environment (CDPHE) requested EPA’s assistance to assess the extent of contamination in the area. EPA’s sampling led to the establishment of the VB/I70 Superfund Site and a designation of a discreet area for sampling. Between 1998 and 2003 EPA conducted several removal actions and additional sampling of residential properties in the area. In September, 2003 EPA and CDPHE issued a Record of Decision for the Site. The selected remedy called for additional sampling of all residential

property within the study area and soil removal of yards found to exceed the clean up levels of 400 ppm lead and 70 ppm arsenic. The study area included the Denver neighborhoods of Swansea, Elyria, Clayton, Cole, southwest portion of Globeville, and the northern portion of Curtis Park. (Attachment 1).

7. The property on Humboldt Street is within the study area for the Site and has the potential to contain lead and arsenic contamination such as has been found in other parts of the neighborhood. The property is within the Study Area for the Site.

8. To address the release or threatened release of a hazardous substance or pollutant or contaminant at the Site, EPA is conducting certain response actions. These actions include sampling of all potential residential properties within the Study Area and the removal of the top 12 inches of soil from properties that have lead and/or arsenic contamination above the action levels.

9. To perform the response actions described above, it will be necessary for employees, agents, contractors, and other representatives of EPA to immediately enter the Property. The activities for which entry is required include: Collect 30 samples at a depth of 0 to 2 inches from all areas within the yard. Soil samples are not collected under homes or paved areas. If the action levels are exceeded, EPA will proceed to develop a property plan for cleanup and document condition of property. EPA will obtain separate authority for access to conduct soil removal and replacement activities.

10. EPA estimates that the duration of the required entry and access will be approximately 4 hours for sampling activities and 4 hours on another day to develop the property plan. EPA anticipates completion of all activities by September 30, 2006.

11. EPA has tried repeatedly to contact the listed owner to obtain access, but has received no response. The City intends to take possession of this property upon completion of the work. The City, while not the current owner of the property, consents to EPA's access.

12. EPA and its contractors have been ready to perform the sampling since 2004, but have been prevented from so doing because of the Respondents' failure to grant access. EPA is doing its final sampling in July 2006 and will complete all remediation by the end of the calendar year. Failure to take action now will result in this property being left as a potential hazard in the community.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

13. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

14. Respondents are "person(s)" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

15. All of the substances listed in Paragraph 6 and 7 above are hazardous substances or pollutants or contaminants within the meaning of Sections 101(14) and 101(23) of CERCLA, 42 U.S.C. §§ 9601(14), 9601(23).

16. Based on the information provided in Paragraphs 6 and 7 of this Order, EPA has a reasonable basis to believe that there may be a release or threat of release of a hazardous substance or pollutant or contaminant, within the meaning of Sections 101(22) and 104(e)(1) of CERCLA, 42 U.S.C. §§ 9601(22) and 9604(e)(1), at the Property.

17. The property owned or controlled by Respondents referred to in Paragraph 4 above is within the study area adjacent to, a facility:

- a. from which a hazardous substance has been or may have been released;
and
- b. where entry is needed to determine the need for response, to identify
the appropriate response, and/or to effectuate a response action.

within the meaning of Section 104(e)(3) of CERCLA, 42 U.S.C. § 9604(e)(3).

18. Entry to property owned or controlled by Respondents by the agents, contractors, or other representatives of the United States is needed for the purposes of determining the need for response and if necessary, taking a response within the meaning of Section 104(e)(1) of CERCLA, 42 U.S.C. § 9604(e)(1).

19. EPA's request for access to the Property has not been granted within the meaning of Section 104(e)(5)(A) of CERCLA, 42 U.S.C. § 9604(e)(5)(A), and 40 C.F.R. 300.400(d)(4)(i).

V. ORDER

20. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record, Respondents are hereby ordered to provide EPA and its officers, employees, agents, contractors, and other representatives, full and unrestricted access at all reasonable times to the Property for the purpose of conducting response activities, including but not limited to conducting remedial action activities, including the collection of 30 soil samples at a depth of 0 to 2 inches from all areas within the yard. Soil samples are not collected under homes or paved areas. If the action levels are exceeded, EPA will proceed to develop a property plan for cleanup and document the condition of property. EPA has designated

the Army Corps of Engineers and their contractors, Project Resources, Inc, and Environmental Restoration, Inc., as its representatives solely for the purpose of obtaining access to the Property.

21. Respondents shall not interfere with EPA's exercise of its access authorities pursuant to 42 U.S.C. § 9604(e) and 40 C.F.R. § 300.400(d), and shall not interfere with or otherwise limit any activity conducted at the Property pursuant to this Order by EPA, its officers, employees, agents, contractors, or other representatives. Any such interference shall be deemed a violation of this Order.

22. Nothing herein limits or otherwise affects any right of entry held by the United States pursuant to applicable laws, regulations, or permits.

23. This Order shall apply to and be binding upon Respondents and their successors, heirs and assigns, and each and every agent of Respondents and upon all other persons and entities who are under the direct or indirect control of Respondents, including any and all lessees of Respondents.

24. In the event of any conveyance by Respondents, or Respondents' agents, heirs, successors and assigns, of an interest in the Property, Respondents or Respondents' agents, heirs, successors and assigns shall convey the interest in a manner which insures continued access to the Property by EPA and its representatives for the purpose of carrying out the activities pursuant to this Order. Any such conveyance shall restrict the use of the Property so that the use will not interfere with activities undertaken or to be undertaken by EPA and its representatives. Respondents, or Respondents' agents, heirs, successors and assigns shall notify EPA in writing at least thirty (30) days prior to the conveyance of any interest in the Property, and shall, prior to the transfer, notify the other parties involved in the conveyance of the provisions of this Order.

VI. ENFORCEMENT

25. Compliance with this Order shall be enforceable pursuant to Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5). A court may impose a civil penalty on Respondents of up to \$32,500 for each day that Respondents unreasonably fail to comply with this Order, as provided in Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5), and the Civil Monetary Penalty Inflation Adjustment Rule, 69 Fed. Reg. 7121, 40 C.F.R. Part 19.4. In addition, any person who is liable for a release or threat of release of a hazardous substance or pollutant or contaminant and who fails to comply with this Order may be liable for punitive damages in an amount up to three times the amount of any costs incurred by the United States as a result of such failure, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Nothing herein shall preclude EPA from taking any additional enforcement actions, and/or other actions it may deem necessary for any purpose, including the prevention or abatement of a threat to the public health or welfare, or the environment arising from conditions at the Property, and recovery of the costs thereof.

26. Nothing in this Order constitutes a waiver, bar, release, or satisfaction of or a defense to any cause of action which EPA has now or may have in the future against Respondents, or against any entity which is not a party to this Order.

27. Nothing in this Order shall affect in any manner the right of EPA to issue any other orders to or take any other administrative or civil action against Respondents or any other parties under CERCLA which relate to this Property or any other site.

28. Nothing in this Order constitutes a decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

VII. ADMINISTRATIVE RECORD

29. EPA has established an Administrative Record which contains the documents that form the basis for the issuance of this Order. It is available for review by appointment on weekdays between the hours 9:00 AM and 4:00 PM at the EPA offices in Denver, Colorado. To review the Administrative Record, please contact Lynn Anne Farnsworth at 303/312-6487 to make an appointment.

VIII. OPPORTUNITY TO CONFER

30. Within three business days after receipt of this Order by Respondents, Respondents may request a conference with EPA, to be held no later than two business days after Respondents' request, on any matter pertinent to this Order, including its applicability, the factual findings and the determinations upon which it is based, the appropriateness of any actions Respondents are ordered to take, or any other relevant and material issues or contentions which Respondents may have regarding this Order. Respondents may appear in person or by an attorney or other representative at the conference. Respondents may also submit written comments or statements of position on any matter pertinent to this Order no later than the time of the conference, or at least two business days before the effective date of this Order if Respondents do not request a conference. EPA will deem Respondents to have waived their right to the conference or to submit written comments if it fails to request the conference or submit comments within the specified time period(s). Any request for a conference or written comments or statements should be submitted to:

Karen S. Kellen
Enforcement Attorney (8ENF-L)
United States Environmental Protection Agency
Suite 300

999 18th Street
Denver, CO 80202
Telephone: 303/312-6518

IX. EFFECTIVE DATE; COMPUTATION OF TIME

31. Because of the immediate need to conduct the activities described above, this Order shall be effective four business days after its receipt by Respondents or Respondents' designated representative, or the posting of such notice at the property (Attachment 2), unless a conference is timely requested as provided above. If a conference is timely requested, then at the conclusion of the conference or after the conference, if EPA determines that no modification to the Order is necessary, the Order shall become effective immediately upon notification by EPA of such determination. If modification of the Order is determined by EPA to be necessary, the Order shall become effective upon notification by EPA of such modification. Any EPA notification under this paragraph may, at EPA's discretion, be provided to Respondents by facsimile, electronic mail, or oral communication; provided that if EPA does use such a form of notification, it will also confirm such notification by first class, certified or express mail to Respondents or its legal counsel. Any amendment or modification of this Order by EPA shall be made or confirmed in writing.

32. For purposes of this Order, the term "day" shall mean a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or federal legal holiday. When computing any period of time under this Order, if the last day would fall on a Saturday, Sunday, or federal legal holiday, the period shall run until the next business day.

X. NOTICE OF INTENT TO COMPLY

33. On or before the effective date of this Order, Respondents shall notify EPA in writing whether Respondents will comply with the terms of this Order. Respondents' failure to notify EPA of its unconditional intent to fully comply with this Order by the time the Order becomes effective shall be 1) construed as a denial of EPA's request for access, and 2) as of the effective date of the Order, treated as a violation of the Order. Such written notice shall be sent to:

Karen S. Kellen
Enforcement Attorney (8ENF-L)
United States Environmental Protection Agency
Suite 300
999 18th Street
Denver, CO 80202
Telephone: 303/312-6518

XI. TERMINATION

34. This Order shall remain in effect until Victor Kettlepper, Remedial Project Manager or his designee notifies Respondents in writing that access to the Property is no longer needed.

SO ORDERED.

Date: 7/28/06

SIGNED

Michael T. Risner, Director
Legal Enforcement Program

Date: 7/28/06

Kelcey Land for/

Sharon Kercher, Director
Technical Enforcement Program

**IF YOU WOULD LIKE COPIES OF THE ATTACHMENT PLEASE CONTACT THE
REGIONAL HEARING CLERK.**

**THIS DOCUMENT WAS FILED WITH THE REGIONAL HEARING CLERK ON JULY
28, 2006.**